

## SAFEAWAKE PURCHASE AGREEMENT

PLEASE READ THIS CAREFULLY BEFORE YOU PURCHASE THE PRODUCT.

YOUR PURCHASE OF THE PRODUCT IS SUBJECT TO THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT. BY PURCHASING THE PRODUCT, YOU ARE CONSENTING TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, YOU MAY NOT PURCHASE THE PRODUCT. ANY TERM CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT THAT IS DIFFERENT FROM, INCONSISTENT WITH OR ADDITIONAL TO SAFEAWAKE LLC'S TERMS AND CONDITIONS SHALL BE VOID AND UNENFORCEABLE. SAFEAWAKE LLC'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER FORM OR DOCUMENT FROM YOU SHALL NOT BE CONSTRUED AS A WAIVER OF THESE TERMS AND CONDITIONS NOR AN ACCEPTANCE OF ANY SUCH PROVISION.

SafeAwake LLC offers to sell and you ("Customer") agree to purchase the products defined below, subject to the terms and conditions of this Agreement.

### SECTION 1. CUSTOMER'S RIGHTS AND OBLIGATIONS.

**1.1 Products.** For the purposes of this Agreement, the term "Products" means the hardware ("Hardware"), software ("Software") and accessories (three Lithium batteries, one AC power adapter, and one bed shaker) provided by SafeAwake to Customer, together with related the printed or electronic user manual and user guides or instructions regarding use of the Product provided at the time of delivery ("Documentation"), and other related materials, if any, that SafeAwake may provide under to Customer in connection with the Product.

**1.2 Purchases.** Subject to the terms and conditions herein, Customer may purchase the Products by completing the process set forth on SafeAwake's Website. Customer acknowledges and agrees that all orders submitted by Customer for Products shall be subject to the terms and conditions of this Agreement and subject to acceptance by SafeAwake, which shall be deemed to occur only if Customer receives electronic confirmation from SafeAwake that SafeAwake has received such order. Customer acknowledges and agrees that an email sent by SafeAwake to Customer's registered email address confirming receipt of the order shall fulfill the foregoing obligation. All prices for the Products and shall be the price in effect as of the date the order is submitted by Customer to SafeAwake.

**1.3 Delivery Schedule.** Upon receipt by SafeAwake of an order, SafeAwake will notify Customer of an estimated shipment date for the Products designated in Customer's order (the "Estimated Delivery Date"). SafeAwake will use commercially reasonable efforts to ship the Products by the applicable Estimated Delivery Date. Without liability to any person and without prejudice to any other remedy, SafeAwake may withhold or delay shipment of any order, or part thereof, if Customer is late in payment or is otherwise in default under this Agreement. In no event shall SafeAwake be liable to Customer for any delay in delivery due to shortages of labor, energy, components, raw materials or supplies, or acts of God, or for any other reason beyond SafeAwake's reasonable control.

**1.4 Delivery Terms.** Customer will be responsible for the shipping costs associated with the Products.

**1.5 Refund.** If, for any reason, you are not satisfied with the Products, you may return the Products to SafeAwake within 30 days of your receipt of the Product and receive a full refund. Customer is responsible for all shipping costs associated with any such return of Products.

**1.6 License Grant.** Notwithstanding any other term in this Agreement or the information provided by SafeAwake in connection with the Products, SafeAwake will retain all right, title and interest in and to the Software and Documentation provided by SafeAwake to Customer in connection with the Products. SafeAwake grants Customer a non-transferable, non-exclusive, royalty-free license to use the Software and Documentation solely in connection with Customer's use of the Products, subject to the following restrictions: (a) Customer will use the Software and Documentation for Customer's purposes only, and (b) Customer will not (i) sell, rent, license, assign, distribute, or transfer the Software or any Documentation; (ii) decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of underlying ideas, algorithms, file formats, programming, or interoperability interfaces of the Software or Hardware; (iii) copy the Software or any Documentation; (iv) remove from the Software or Documentation any language or designation indicating the confidential nature thereof or the proprietary rights of SafeAwake or its suppliers; or (v) export, re-export or permit any third party to export or re-export, directly or indirectly, the Software or Documentation where such export or re-export is prohibited by U.S. law or other

applicable law without appropriate licenses and clearances. All Software and Documentation will be confidential information of SafeAwake and subject to the confidentiality obligations set forth in this Agreement.

## SECTION 2. FEES AND PAYMENT TERMS.

**2.1 Fees.** Customer shall pay to SafeAwake the one-time fee and charges for the Products as such fees are set forth in the applicable SafeAwake order form required by SafeAwake for the purchase of such Products.

**2.2 Payments and Late Fees.** All payments will be made in U.S. dollars. Any undisputed payment, or portion thereof, not received within thirty (30) days of the invoice date may, in SafeAwake's sole discretion, accrue interest at a rate of one and one-half percent (1 ½%) per month, or the highest rate allowed by applicable law, whichever is lower.

**2.3 Suspension of Delivery.** Customer acknowledges and agrees that in addition to any interest that may accrue on past due undisputed payments in accordance with Section 2.2 ("Payments and Late Fees"), in the event SafeAwake does not receive payment within fourteen (14) days from the original due date, in addition to all other remedies available to SafeAwake in this Agreement and otherwise, SafeAwake shall have the right, exercisable in its sole discretion, to suspend delivery of Products to Customer for which Customer has not paid the then-current balance upon five (5) calendar days written notice to Customer, until such time that the outstanding balance is paid in full.

**2.4 Taxes.** The fees and charges for the Products do not include federal, state or local taxes. Customer shall be responsible for and agrees to pay in full any and all taxes resulting from this Agreement or any activities under this Agreement, except for taxes based upon SafeAwake's income.

## SECTION 3. SAFEAWAKE'S LIMITED WARRANTY.

**3.1 Limited Warranty.** SafeAwake warrants to the original purchaser that the Products are free from defects in materials and workmanship at the time of delivery. If a defect in materials or workmanship that was present in the Products at the time of delivery manifests within twenty-four (24) months from the date of delivery, SafeAwake will correct these defects by repair, or at SafeAwake's sole discretion, replace the Products or refund the purchase price of the Products. SafeAwake's obligations under this Limited Warranty are contingent upon SafeAwake's determination, at its sole discretion, that the defect is a covered defect in materials or workmanship. SafeAwake's obligation under this Limited Warranty shall not include shipping charges. This Limited Warranty is applicable only to the original purchaser of the Products.

**3.2 Conditions of Warranty Coverage.** SafeAwake does not warrant: (a) defects and/or damage caused by misuse, abuse, negligence, improper storage, or the mishandling of the Products; (b) defects and/or damage caused by use of the Products for purposes other than those for which it was designed or intended; (c) damage and/or defects caused by any improper installation; (d) damage and/or defects caused by unauthorized attempts to repair, alternate, or otherwise modify the Products; (e) damage and/or defects caused by exposure to chemicals, water, or excessive temperatures; and (f) any defect, damage, and/or failure as a result of accident, earthquake, fire, flood, or other casualty or acts of God. This Limited Warranty does not apply to consumable parts such as batteries.

**3.3 LIMITATIONS.** ALL EXPRESS AND IMPLIED WARRANTIES ON THIS PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE EXPIRATION OF THE LIMITED WARRANTY PERIOD. SOME STATES DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH VARY FROM STATE TO STATE.

**3.4 EXCLUSIVE REMEDY.** THE CUSTOMER AGREES THAT EXCEPT WHERE SUCH LIMITATIONS AND EXCLUSIONS ARE SPECIFICALLY PROHIBITED BY APPLICABLE LAW, THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST SAFEAWAKE SHALL BE FOR THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCTS, OR REFUND THE PURCHASE PRICE OF THE PRODUCTS (SUBJECT TO THE LIMITATIONS SET FORTH IN SECTIONS 3.1 and 3.2), AND THAT NO OTHER REMEDY (INCLUDING BUT NOT LIMITED TO INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOST PROFITS, LOST SALES, INJURY TO PERSONS OR PROPERTY, OR ANY OTHER LOSS) SHALL BE AVAILABLE TO THE CUSTOMER, WHETHER THE REMEDY IS BASED UPON DIRECT ACTION, SUIT FOR CONTRIBUTION OR INDEMNITY, OR OTHERWISE, WHETHER ARISING OUT OF CONTRACT, TORT, STATUTE, PRODUCT LIABILITY, STRICT LIABILITY IN TORT, OR OTHERWISE. This exclusive

remedy shall not be deemed to have failed of its essential purpose as long as SafeAwake is willing and able to repair or replace the defective Products (subject to the limitations and conditions set forth in Sections 3.1 and 3.2). In the event of repair or replacement under the terms of this Limited Warranty, the warranty on the repaired or replacement product will extend for the balance of the warranty period in effect at the time the original Product prove defective. **SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.**

**3.5 Limitation of Damages.** The parties agree that in no event shall SafeAwake's liability for any claim or combination of claims under this Limited Warranty exceed the original purchase price of the Products. SafeAwake is not responsible for labor costs or other expenses required to replace such defective Products or to repair damage resulting from the use of the defective Products. Customer acknowledges that these limitations of damages are reasonable in light of the anticipated harm caused by any breach of this Limited Warranty, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

**3.6 Obtaining Warranty Service.** . To obtain warranty service, visit the SAFEAWAKE website, [www.safeawake.com](http://www.safeawake.com), for contact information. Contact SAFEAWAKE for a return authorization number and instructions for returning the Product. Customer is responsible for payment of the shipping of the Product to SAFEAWAKE. Damage incurred during shipment is not covered by this Limited Warranty. Customer is responsible for payment of any insurance for the shipment of the Product to SAFEAWAKE.

#### SECTION 4. INTELLECTUAL PROPERTY RIGHTS; INDEMNIFICATION.

**4.1 Ownership.** All intellectual property rights in and to the Products and any improved, updated, modified or additional parts thereof, and all intellectual property rights embodied therein, shall at all times remain the property of SafeAwake and/or SafeAwake's suppliers. Subject to payment in full for the Products, SafeAwake acknowledges that Customer acquires title to the Hardware portion of the Product, but not to the Software in the Products. Nothing herein shall give or be deemed to give Customer any right, title or interest in or to the same except as expressly provided in this Agreement. SafeAwake and its suppliers reserve all rights not expressly granted herein. Customer agrees not to remove or destroy any copyright, logo, trademark, trade name, proprietary markings, or confidentiality legends placed upon or contained within the Products.

**4.2 Indemnification.** Subject to Section 6, SafeAwake shall defend, indemnify and hold Customer harmless from and against all damages, penalties, costs and expenses (including reasonable attorney's fees) incurred by Customer in connection with any third party suit, claim or proceeding which alleges that the Products infringe any United States copyright or United States patent, provided that Customer: (a) provides to SafeAwake prompt written notice of any such claim; (b) permits SafeAwake to control the defense and settlement of such claim; (c) cooperates fully with SafeAwake in any such defense, at SafeAwake's expense; and (d) does not enter into any settlement or compromise of any such claim without SafeAwake's express written permission. The foregoing indemnity obligation shall not extend to any claims of infringement to the extent arising out of or related to (i) a modification of the Products by anyone other than SafeAwake or its suppliers; and/or (ii) a combination of the Products with any third party software or hardware where such combination is the cause of such infringement. **The foregoing states Customer's sole and exclusive remedy and SafeAwake's sole obligations for any alleged infringement of any third-party intellectual property rights with respect to any Products. [Discuss indemnity obligations.]**

#### SECTION 5. CONFIDENTIALITY OBLIGATIONS.

**5.1 Definition of Confidential Information.** "Confidential Information" means any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, inventions, know-how, processes, equipment, algorithms, software programs, information related to the current, future and proposed products and services of SafeAwake and its suppliers, and includes, without limitation, SafeAwake's information concerning research, development, specifications, pricing, purchasing, business forecasts, sales and merchandising, marketing plans and supplier information. If information is provided (a) in a tangible medium of expression, such information must be conspicuously designated as "Confidential" or "Proprietary;" or (b) orally, such information must be identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure. If it should be reasonably understood from the nature of the information or the circumstances of disclosure that such information is of a confidential or proprietary nature, such information shall also be deemed Confidential Information. "Confidential Information" also includes proprietary or confidential information of any third party disclosed to a party in the course of the party's business pursuant to a confidentiality/nondisclosure agreement.

**5.2 Nondisclosure and Nonuse Obligations.** Each party agrees that it will not use, disseminate or in any way disclose the other party's Confidential Information to any person, firm or business, except for any purpose the disclosing party may hereafter authorize in writing. Each party agrees that it shall treat the other party's Confidential Information with the same degree of care as it accords to its own Confidential Information but in no case less than reasonable care shall be used. Each party agrees that it may disclose the other party's Confidential Information only to those of its employees and contractors who need to know such information, and who are obligated to protect the other party's Confidential Information by terms and conditions substantially similar to those terms and conditions set forth in this Agreement. Each party shall immediately give notice to the other party of any unauthorized use or disclosure of the other party's Confidential Information. Each party agrees to assist the other party in remedying any such unauthorized use or disclosure of the other party's Confidential Information.

**5.3 Exceptions.** The obligations under Section 5.2 ("Nondisclosure and Nonuse Obligations") shall not apply to information that: (a) was in the public domain at or subsequent to the time such information was communicated to the receiving party by the disclosing party through no fault of the receiving party; (b) was rightfully in the receiving party's possession free of any obligation of confidence at or subsequent to the time such information was communicated to the receiving party by the disclosing party; (c) was developed by employees or contractors of the receiving party independently of and without reference to any Confidential Information communicated to the receiving party by the disclosing party; or (d) was communicated by the disclosing party to an unaffiliated third party free of any obligation of confidence. A disclosure by a party of the other party's Confidential Information: (i) in response to a valid order by a court or other governmental body; (ii) otherwise required by law; or (iii) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement by such party or a waiver of confidentiality for other purposes; provided, that in the case of (i) or (ii), such party shall provide prompt prior written notice thereof to the other party to enable the other party to seek a protective order or otherwise prevent such disclosure.

**SECTION 6. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF REVENUE OR BUSINESS, OR FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER ANY CAUSE OF ACTION, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL SAFEAWAKE'S AGGREGATE LIABILITY FROM OR IN RELATION TO ANY MATTER UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, EXCEED THE TOTAL AMOUNT FEES PAID BY CUSTOMER HEREUNDER FOR THE PRODUCTS. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

**SECTION 7. TERM AND TERMINATION.**

**7.1 Term; Survival.** Subject to the limitations set forth in Section 3, this Agreement is effective on the date you purchase the Products and will continue in effect during your use of the Products. All terms intended to survive any termination or expiration of this Agreement will survive, including Sections 5 and 6.

**SECTION 8. GENERAL PROVISIONS.**

**8.1 Governing Law.** This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Maryland, exclusive of the conflicts of law principles. The UN Convention on Contracts for the International Sale of Goods is expressly disclaimed from application to this Agreement in all respects.

**8.2 Choice of Venue and Consent to Jurisdiction.** Any legal action or proceeding by Customer arising out of or relating to this Agreement shall be brought in the United States District Court for the District of Maryland or in any court of the State of Maryland sitting in Anne Arundel County. Customer consents to the *exclusive* jurisdiction of: (i) the United States District Court for the District of Maryland and its appellate courts; and (ii) any court of the State of Maryland sitting in Anne Arundel County and its appellate courts for the purpose of all legal actions and proceedings arising out of or relating to this Limited Warranty. Customer waives, to the fullest extent permitted by law: (a) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Limited Warranty brought in any court of the State of Maryland sitting in Anne Arundel County, or the United States District Court for the District of Maryland; and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. Customer further acknowledges that the courts of Maryland have specific personal jurisdiction over it relating to any disputes arising out of or relating to this Limited Warranty.

**8.3 Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood,

storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause that is beyond the reasonable control of such party.

**8.4 Severability.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision; and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

**8.5 Waiver; Amendment.** No term or provision hereof will be considered waived, and no breach excused, by either party, unless such waiver or consent is in writing signed by the party against whom such waiver or consent is asserted. The waiver by either party of, or consent of either party to, a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by the other party.

**8.6 Independent Contractor.** Each party to this Agreement is and at all times shall be an independent contractor in all matters relating to this Agreement. Neither party nor its employees are agents of the other party for any purposes and have no power or authority to bind or commit the other party in any way. Neither party nor its employees are or shall act as employees of the other party for any purpose, or under any other laws or regulations, which would or might impute any obligation or liability to the other party to this Agreement by reason of any employment relationship. Neither party shall enter into any agreement, contract or arrangement with any government or government agency or with any other person, firm, corporation, entity or enterprise imposing any legal obligation or liability of any kind on the other party.

**8.7 Injunctive Relief.** A breach by either party of any of the promises or agreements contained herein may result in irreparable and continuing damage to the other party for which there is no adequate remedy at law, and the other party shall be entitled to seek injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

**8.8 Assignment.** Except as expressly stated otherwise herein, Customer will not assign or transfer this Agreement or any rights or obligations under this Agreement without the prior written consent of SafeAwake, which consent shall not be unreasonably withheld, and any attempted assignment in violation of this provision will be void.

**8.9 Notices.** Any notices required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission and provided written notice is concurrently given by first class mail or by overnight courier; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notices sent to Customer will be sent to the addresses set forth in Customer's order. Notices sent to SafeAwake will be sent to the address set forth on SafeAwake's website.

**8.10 Headings.** Headings used in this Agreement are for convenience only and shall not be used in construing it.

**8.11 Complete Agreement; Modifications.** This Agreement, completely and exclusively states the entire agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior or contemporaneous proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of SafeAwake and Customer by their duly authorized representatives. No terms or conditions contained in any order for products or services, or acknowledgement thereof, shall modify this Agreement, except for the price and quantity terms contained therein, as mutually agreed in writing by the parties.